

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

VC MACON GA, LLC,)
)
Plaintiff,)
)
vs.) CASE NO. 18-CV-00388-TES
)
VIRGINIA COLLEGE, LLC and)
EDUCATION CORPORATION OF)
AMERICA,)
)
Defendants.)

**DECLARATION OF THOMAS P. GALLAGHER, CO-TRUSTEE OF THE DON LEVIN
TRUST DATED AUGUST 30, 1991, AS AMENDED, IN SUPPORT OF DON LEVIN
TRUST'S MOTION TO VACATE PRELIMINARY INJUNCTION AND
RECEIVERSHIP ORDER**

1. I am the co-trustee of the Don Levin Trust dated August 30, 1991. Thomas D. Gordon is the other co-trustee.

2. The Don Levin Trust is not a party in the above captioned action, but is an interested third party.

3. The Don Levin Trust rents real property located in St. Lucie County, Florida to Defendant Virginia College, LLC. The lease is guaranteed by the Education Corporation of America ("Defendants").

The Premises And Lease

4. On April 12, 2012, the predecessor in interest to the Don Levin Trust, DHS VC II, LLC ("DHS"), as landlord, leased certain real property located at 2810 South Federal Highway, Fort Pierce, FL 33607, to Virginia College's predecessor-in-interest Medical Career Center, Inc.

(“MCC”), as tenant. A true and accurate copy of the lease, which attaches the Lease Guaranty, is attached hereto as **Exhibit “A”** (the “Initial Lease”).

5. On August 24, 2012, DHS and MCC executed the First Amendment to Lease Agreement, which expanded the leased premises, and amended other terms and conditions of the Initial Lease, as more fully set forth in the First Amendment to the Lease Agreement. A true and accurate copy of the First Amendment to Lease Agreement is attached hereto as **Exhibit “B.”** (The Initial Lease and First Amendment to Lease Agreement are collectively referred to as the “Lease”).

6. The leased premises are located at 2810 South Federal Highway, Fort Pierce, Florida 34949, and 238 South Highway 1, Fort Pierce, Florida 34949 (the “Premises”).

7. On or about March 14, 2014, DHS transferred title to the Premises to Alliance Ft. Pierce, LLC, which, in turn, transferred title to the Premises and assigned the Lease to the Don Levin Trust on or about October 14, 2016.

8. On or about April 25, 2018, MCC assigned its interest in the Lease to Defendant Virginia College. A true and accurate copy of the Notice of Assignment of Lease Agreement dated April 12, 2012 is attached thereto as **Exhibit “C.”**

Defendants Are In Default Under The Lease

9. Defendants are in default for failure to pay late charges for August 2018 and failure to pay rent and late charges due in September, October, November, and December (with the exception of a late, partial payment for November).

10. The current rent for the Premises is \$86,460.36 per month, and the lease provides for annual rent increases.

11. On November 6, 2018, the Don Levin Trust sent a letter to Defendant Virginia College demanding payment of the amount then owed under the lease or surrender of possession

of the Premises within three (3) days pursuant to Section 83.20 of the Florida Statutes.

Defendant Virginia College did neither.

12. Defendant Virginia College remains in possession of the Premises without the permission or consent of the Don Levin Trust.

13. As of November 30, 2018, the amount due and owing from Defendants under the Lease was \$223,644.13, and attorneys' fees incurred to enforce the lease.

14. As of today's date (December 5, 2018), Defendants have also failed to pay rent for December, which was due on December 1, bringing the total amount due \$310,104.49, plus attorneys' fees.

The Nationwide Preliminary Injunction Prevents The Don Levin Trust From Pursuing Its Legal Remedies For Defendants' Default

15. Though the Don Levin Trust is not a party to this action, its rights have been impacted by Order of this Court.

16. Specifically, on November 14, 2018, this Court entered an order appointing a receiver over Defendants and preliminarily enjoining all creditors (including the Don Levin Trust) from bringing any action, in any court, against Defendants.

17. Thus, the nationwide preliminary injunction prohibits the Don Levin Trust from bringing an action against Defendants in Florida, or anywhere else, for past rent and eviction from the Premises.

The Don Levin Trust Has No Relationship to Georgia

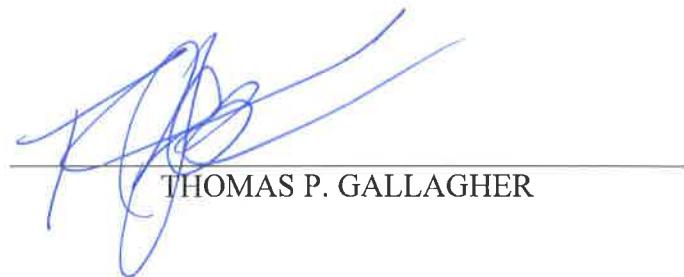
18. The Don Levin Trust has no contacts with the State of Georgia.

19. The Don Levin Trust does not own, rent, use or possess any real property within Georgia. It does no business whatsoever in Georgia.

20. I am not, and never have been, a resident of the State of Georgia. I permanently reside in California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: December 5, 2018



THOMAS P. GALLAGHER